

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

JIMMY G. BILES, JR.,

Case No. 11-CV-00294-J

Plaintiff,

Cheyenne, Wyoming

vs.

January 4, 2012

8:33 a.m.

LISA SHAURETTE FALLON,

Defendant.

JOHN H. SCHNEIDER and
MICHELLE SCHNEIDER,

Non-Party Movants.

CERTIFIED COPY

TRANSCRIPT OF MOTION PROCEEDINGS

BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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MS. MARY KRISTEEN HAND
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For the Defendants:

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OFFICIAL COURT REPORTER - (307)778-0078

Proceedings recorded by mechanical stenography,
transcript produced by computer.

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1 APPEARANCES: (Cont.)

2 For the Movant:

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Attorney at Law

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I N D E X

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11 ORAL ARGUMENTPAGE

12 MOTION TO QUASH

Mr. Stinson

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Mr. Fleck

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Mr. Stinson

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Mr. Fleck

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Mr. Silva

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Mr. Fleck

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Mr. Stinson

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Mr. Fleck

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Ruling of the Court

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1 (Proceedings commenced 8:33 a.m.,
2 January 4, 2012.)

3 THE COURT: The matter for hearing this morning is
4 Jimmy Biles against Lisa Fallon, Docket 11-CV-294. Dr. Biles
5 practices medicine in the Cody area, and this matter concerns
6 an issue that exists by and between the third party and
7 presently a nonparty to this suit but defendants in another
8 brought by Dr. Biles, John and Michelle Schneider. The third
9 parties have moved to quash a subpoena that is aimed I think
10 at attempting to discover the nature of conspiratorial action
11 between Fallon and Schneider to injure Dr. Biles.

12 Appearing by telephone conference call this morning
13 we have for Dr. Biles Kristeen Hand, Daniel Fleck. Appearing
14 for the Schneiders is Laurence Stinson. And appearing for the
15 Defendant Fallon is Peter Craig Silva.

16 Are the parties ready to proceed?

17 MR. FLECK: Yes, Your Honor.

18 MR. STINSON: The Schneiders are, Your Honor.

19 MR. SILVA: Yes, sir, Your Honor.

20 THE COURT: Very well. I will hear arguments at this
21 point. And identify yourselves for the record so the court
22 reporter can attribute your arguments to you.

23 MR. STINSON: Your Honor, this is Laurence Stinson
24 representing nonparties Michelle and John Schneider. I take
25 it I'll go first since its my motion, Your Honor. I know the

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1 conference is set for a short time this morning, so I'll get
2 to my point.

3 It seems to me there are two questions we are asking
4 the Court to address. The first is whether the subpoena
5 creates an undue burden or expense, and in line with that the
6 second is whether the plaintiff in response to our motion to
7 quash has shown relevance or need or -- and a balancing of the
8 six other factors from the *Wiwa v Royal Dutch Pet* case.

9 Getting right to the heart of the matter, Your Honor,
10 the defendant, Lisa Fallon, has been deposed in this case. I
11 have not viewed her deposition. The representation has been
12 made to me that the parties have agreed for the deposition to
13 be sealed, but I am unaware of any court order sealing it.
14 Certainly the Court is able to access any sealed document, and
15 the Court has access to any testimony whether the Schneiders
16 as nonparties do or do not.

17 Mr. Silva was asked by the plaintiff's firm it's my
18 understanding to contact the Schneiders' lawyer, that's me,
19 and to discuss the facts in this case. He did so, and in that
20 discussion I was advised that during the deposition Ms. Fallon
21 testified that she and she alone is the architect of the
22 alleged defamatory flyer that is the heart and the exclusive
23 issue in the *Biles v Fallon* case. I make that representation
24 to the Court as to what I was told. I haven't seen the
25 deposition. But the plaintiff's objection to the motion to

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1 quash does not deny the assertion made in the motion to quash
2 that Lisa Fallon took sole responsibility for creating the
3 flyer, did not seek preapproval of the information in that
4 flyer from the Schneiders, and did not have that flyer
5 ratified or otherwise approved of by the Schneiders. So in
6 light of that, Your Honor, we think Rule 45(c)(1) states that
7 an attorney must take reasonable steps to avoid imposing undue
8 burden or expense, that's the language, must, and it further
9 states the Court must enforce this duty.

10 If, as it has been represented, Ms. Fallon does take
11 sole and exclusive responsibility for the flyer after seven
12 hours or so of deposition, then the burden -- there's been no
13 relevant or reasonable link between the information sought and
14 plaintiff's need.

15 More importantly, there's been no explanation on the
16 record with citation to any authority of the allegations made
17 by the plaintiffs in their responsive pleading. There's a
18 sort of list on page 8 and 9 of the plaintiff's responsive
19 pleading that makes a series of broad allegations. I look at
20 those in two lights, Your Honor.

21 The first is that even if some of those are true,
22 they are not contained within the flyer. For example, a
23 statement is made by the plaintiff that Dr. Schneider tells
24 Ms. Fallon that Dr. Biles has been -- has driven his car off
25 the road while drinking. The plaintiff states this is false.

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1 Well, whether that's true or false is irrelevant. It's not
2 contained within the flyer. And there are several allegations
3 there that are not contained within the flyer. So the
4 question is whether there's a link between the information in
5 the flyer and some conduct on the part of the Schneiders.
6 There's been no assertion of that, and there's been no support
7 to the -- there's been assertion, but there's been no support
8 to the record or any evidence, and I would think that that's
9 paramount and key to the Court's understanding.

10 With regard to the subpoena, Your Honor, we believe
11 it's overbroad because it seeks two years of information:
12 Specifically, any phone calls to any Indiana area code is the
13 way I read it; production, production of all computers or
14 phones in control of the Schneiders for a two-year period; a
15 detailed list of bank accounts with a transaction history for
16 15 years; years of e-mail and other communication between the
17 Fallons and the Schneiders.

18 Now, there's no denying on the part of the Schneiders
19 or I don't believe anybody else, I'm assuming Miss Fallon has
20 admitted this, but the Fallons and the Schneiders know each
21 other. They have been friends. I believe the Schneiders are
22 godparents of Ms. Fallon's child. And there's going to be
23 communication between them, or I assume there is. I don't
24 think anyone is denying that. But it would seem key for the
25 Court to review her testimony in toto to understand if what I

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1 have been told is correct and, in fact, if she does admit to
2 being the sole and principal -- or the sole, excuse me,
3 architect of that flyer. If so, the relevance or need for the
4 information sought is simply nonexistent.

5 Another point made by plaintiffs in their response,
6 Your Honor, was that Mr. -- excuse me, Dr. Schneider and
7 Ms. Schneider did not deny the broad sort of sweeping
8 allegation that they are somehow involved in the creation of
9 the flyer. It's my understanding, and I have represented this
10 to the plaintiff's counsel, that, in fact, their testimony
11 would be they were not the architects of that flyer, they did
12 not create the flyer, they did not preapprove the flyer, and
13 they were not aware of the mailing of the flyer before they
14 received the flyer in the mail. So that testimony may come to
15 light if the case against Dr. Schneider and Ms. Schneider is
16 served, which it hasn't been yet, and if their testimony is
17 taken. But it seems presumptuous in the context of this case
18 to make that statement that the denial does not exist and,
19 therefore, the Court should understand that there's some sort
20 of tacit admission on the part of Dr. Schneider. So I wanted
21 the Court to understand that that's not the case.

22 Lastly, Your Honor, on page 9 of plaintiff's response
23 there's a statement, a single sentence that says Defendant
24 Fallon did not act alone, but there's no citation for that.
25 There's no reference to a deposition. There's no reference to

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1 some other documentation that would contradict the
2 representation I've been told which is she says she did.
3 Without belaboring the point, it simply seems a very easy
4 process for her deposition testimony to be produced to the
5 Court at the very least so the Court can take in camera review
6 of that deposition and find if there is good and valid grounds
7 to allow this broad subpoena and to allow the discovery of
8 these items. There is -- the Schneiders are not getting rid
9 of any information they have. They have been instructed and
10 have agreed to hold on to any information they have pending
11 this Court's ruling, and there is no worry about waste or
12 spoliation of any evidence that would exist. But, Your Honor,
13 I think first there has to be some link to those six factors
14 in *Wiwa v Royal Dutch Pet* that there is relevance or need and
15 that that relevance or need is surpassing and paramount to the
16 broad, broad request and the burden which is objected to.

17 Unless the Court has any questions, I don't have
18 anything further, Your Honor.

19 THE COURT: Thank you, Mr. Stinson.

20 Who will be speaking next?

21 MR. FLECK: Your Honor, this is Dan Fleck.

22 THE COURT: Mr. Fleck.

23 MR. FLECK: I think that the Court has been educated
24 about, through the brief or through the Complaint, about what
25 our allegations exactly are. As an initial matter, I would

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1 say that Mr. Silva and I agreed at the inclusion of
2 Miss Fallon's deposition testimony that we would invoke the
3 rule, Rule 615, as it applies to this deposition. Apparently
4 Mr. Silva and I had a misunderstanding about what invoking the
5 rule or what the parameters of invoking the rule were because,
6 frankly, Mr. Stinson shouldn't even know what he knows about
7 the deposition as it exists. I would encourage the Court to
8 review the deposition in camera as I think that it's very
9 telling about what actually happened here.

10 So let's talk about relevance, Your Honor.
11 Miss Fallon is a resident of the state of Indiana. She has no
12 connection whatsoever to Cody, Wyoming. She has never met
13 Dr. Biles. She doesn't know anything about Dr. Biles.
14 According to Mr. Stinson's brief, Miss Fallon -- or, I'm
15 sorry, Dr. Schneider is a competing physician with Dr. Biles.
16 What this flyer did to Dr. Biles was assassinate his
17 character. It is untrue, the statements that were made about
18 him, patently untrue. Everybody from the Wyoming state Board
19 of Medicine to the sheriff has determined that it is untrue.
20 And Miss Fallon has taken responsibility for the creation of
21 the flyer. We would put forth, Your Honor, that we believe
22 that Miss Fallon has done this at the direction of
23 Dr. Schneider, that she has taken full sole responsibility to
24 prohibit us from going into these matters.

25 Miss Fallon has e-mailed extensively with

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1 Dr. Schneider. Therefore, we have asked for her e-mails.
2 Miss Fallon and Dr. Schneider have used multiple e-mail
3 accounts to e-mail. Therefore, we have asked for all e-mail
4 accounts.

5 Dr. Schneider has phoned Miss Fallon repeatedly, and
6 I would paraphrase this by saying that perhaps after this
7 flyer came out or in the time period when this flyer came out
8 it increased at least, at least tenfold the amount of
9 communications they had. So we, therefore, have asked for the
10 phone records.

11 There was testimony, Your Honor, that Miss Fallon and
12 Dr. Schneider were in extensive communication on the exact day
13 preceding the deposition. Your Honor, when you review the
14 file, you'll see that Magistrate Skavdahl had a hearing
15 because Miss Fallon was attempting to get out of her
16 deposition based on medical needs. Dr. Schneider was actually
17 discussing, as a neurosurgeon, her gynecological problems with
18 her the day before this deposition, and we believe there's
19 evidence to suggest that he was even instructing her to go to
20 the hospital so as to avoid the deposition. There's numerous
21 phones that these calls have been made on, so we narrowly
22 tailored our request to those phone calls.

23 And, finally, although Mr. Stinson represents that
24 the Schneiders knew nothing of what was going on with this
25 flyer, in October or early November of 2010, immediately prior

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1 to the flyer being disseminated to almost 14,200 residents of
2 the Big Horn Basin, that Mrs. Schneider sent \$5,000 to
3 Miss Fallon. There's testimony that Miss Fallon -- I'm sorry,
4 that Dr. Schneider was actually in communication with the
5 printer who printed the flyer.

6 So to actually suggest, Your Honor, that no one knew
7 anything that was going on is an interesting interpretation of
8 the facts.

9 Your Honor, I will share a few things with you from
10 the deposition with your permission.

11 THE COURT: Let me ask, before you do that, is there
12 some way that I gain access to that deposition?

13 MR. FLECK: Your Honor, we can send it to you.

14 THE COURT: Probably not a bad idea, and I can look
15 at it in camera as well, but go ahead.

16 MR. FLECK: In the deposition, Your Honor,
17 Miss Fallon said that when this happened she began destroying
18 evidence, that she destroyed three key pieces of evidence, and
19 she admits under oath that these are the three most important
20 pieces of evidence in the entire case. Number one is the
21 e-mails. Number two, it is the list of individuals that was
22 supplied to her by Dr. John Schneider so that she could
23 perform this defamatory act upon Dr. Biles. And then,
24 finally, the third thing that she destroyed was the actual
25 flyer.

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1 Now, Your Honor, it's a little bit confusing here,
2 but in October, immediately after Dr. Biles was pulled over
3 for a DUI, I'm sorry, immediately after he was pulled over for
4 a DUI, six flyers showed up in West Park Hospital that
5 contained information about his arrest. I would suggest to
6 the Court that that flyer is substantially similar in many
7 respects to the flyer that Ms. Fallon, quote/unquote, and I'm
8 putting huge air quotes around here, claims to have created.
9 Miss Fallon has testified under oath that she did not have any
10 knowledge of another flyer that existed in October in the ER
11 or in the OR, rather, of West Park Hospital. Therefore, we
12 would suggest to the Court that somebody somewhere had to have
13 provided that flyer to Miss Fallon.

14 This is a clear indication in every way possible,
15 someone who had no connection whatsoever with Wyoming, who
16 picks Dr. Biles' name out of a hat, does this to him, has
17 numerous, numerous connections with the Schneider family, who
18 Mr. Stinson claims is a competing physician who gave money,
19 who gave the mailing list, and who also provided much
20 additional information, Your Honor, that I'd rather not
21 discuss right now because we have a nonparty on the phone,
22 those are all reasons that this is highly, highly relevant
23 information. It's not only highly, highly relevant
24 information, Your Honor, but it is so vitally important
25 because of the past testimony about the destruction of

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1 evidence. The idea that we could be protected, that there
2 would be no spoliation, that cow is gone already. That cow is
3 out of the barn. There has been evidence that's been
4 spoliated.

5 Now, Your Honor, I want to talk to you about
6 something else, and everybody here on the phone knows what I'm
7 going to talk about, and that is that the FBI and the U.S.
8 Attorney's Office is currently examining documents that were
9 found in West Park Hospital that seem to indicate that
10 somebody in Cody, Wyoming, was trying to monkey with the
11 testimony that went on in that deposition. Also, there is
12 testimony, and it's in front of the U.S. Attorney and the FBI
13 right now, that somebody actually wrote, somebody not
14 Mr. Silva, actually wrote Miss Fallon's interrogatory answers
15 for her. And these were all found in the laundry at the West
16 Park Hospital. Those documents then went to the Park County
17 attorney, Bryan Skoric, and he sent those on to Mr. Silva and
18 I and immediately sent them on to the U.S. Attorney and the
19 FBI.

20 Now, I don't know what those documents mean because I
21 haven't seen the jump drives that they were found on, I
22 haven't had them forensically examined, I don't really know
23 what the metadata shows, but it's awfully, awfully fishy that
24 they happened.

25 And the reason I bring this up to you, Your Honor, is

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1 twofold. Number one is because I'm an officer of the Court,
2 Your Honor, and as an officer of the Court I believe that
3 somebody has attempted to suborn perjury in this case. I
4 think that it's very, very serious. I don't want to interfere
5 with the criminal process in any way, shape, or form, but
6 something fishy happened up there with those documents.

7 Number two, the reason I bring this up is because if
8 we're sitting here talking about gathering evidence, as we are
9 not only entitled to but by Judge Skavdahl's order we're
10 required to determine who these additional conspirators were
11 and report back to him by the end of the month, we need this
12 information, and we need people to keep their hands off this
13 information and not try to manipulate it, not try to destroy
14 it.

15 This is very, very serious what happened here. It's
16 very, very serious not only because a good man was defamed for
17 no real reason other than spite, but it's also -- now it's
18 become important for the process, Your Honor. The process is
19 being subverted here, and I don't have any idea who's doing
20 it, but I know somebody's doing it. Evidence is being
21 destroyed. Evidence is being manipulated. I believe in my
22 heart that the evidence will show that testimony has been
23 manipulated.

24 And so Mr. Stinson, in his report from Mr. Silva
25 about a sequestered deposition, Mr. Stinson is correct that if

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1 you read the cold page she says I did it, there's no doubt, I
2 did it, I took all responsibility, I didn't have any
3 coconspirators, nobody knew anything else about this. That's
4 what the testimony will read. If you look at the video, I
5 think it gets pretty shaky about what it actually means. And
6 that's why, I guess, the jury gets to determine the
7 credibility of witnesses because that's profoundly unbelievable
8 testimony, profoundly. Somebody has monkeyed with this
9 process, Your Honor, and this evidence is needed, it's
10 relevant.

11 Now, let's talk about the other. You know, there's
12 four reasons you can deny a subpoena. You can say that it
13 didn't allow much time, that it was out of the range, that it
14 somehow involves privileged material, or that it's too
15 burdensome. Well, we'll take care of that last prong
16 completely. We'll pay for anything that it costs to be able
17 to preserve that evidence. And we will share anything that we
18 have, anything that we find, with Mr. Silva and eventually
19 with Dr. Schneider as well once it's evaluated. So there is
20 no burden whatsoever.

21 The process demands, justice demands, Your Honor,
22 that this evidence be gathered in this, that whatever has gone
23 on in this stinky mess is determined and found out and
24 exposed. And that's my argument, Your Honor. If you have any
25 questions, I'd be glad to answer them.

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1 THE COURT: All right. You've dealt with relevance,
2 your need for the documents, the spoliation issue, and the
3 burden imposed. What about the two years, I guess the breadth
4 of the document request?

5 MR. FLECK: Well, Your Honor, here's the reason for
6 that. The timing of this is there's been testimony that the
7 frequency of communications, we suspect, Your Honor, because
8 of the nature, but the tone of the communications, the tenor
9 of the communications, the substance of the communications,
10 but then also this idea that they've had a relationship
11 together for a very long time, that they claim to have a
12 financial relationship together for a very long time, but then
13 all of a sudden just about the time that this dirty deed is
14 done on Mr. -- on Dr. Biles, just about that time they start
15 exchanging funds. And it's a serious amount of money. This
16 isn't, you know, this isn't a penny-a-flyer kind of deal.
17 This is over \$5,000 to a woman who says that she's living
18 paycheck to paycheck. She says this money was given to her by
19 the Schneiders for their goddaughter, whose name is Sarah
20 Fallon or Sarah Shaurette. It's interesting. I believe that
21 she said her name was Shaurette, which is Miss Fallon's maiden
22 name.

23 So do I really want all of these documents? No. I
24 would love this, Your Honor, to be tailored, and I'd love it
25 to be the kind of case where I could just simply pick up the

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1 phone and say, like we used to a lot under the old
2 self-executing discovery rules, here's what I'd like to have,
3 could you please send it to me. But, Your Honor, because they
4 have, have I believe tried to manipulate this process to such
5 a degree, I don't trust them to give us what we're asking for.
6 And this is in no means, no way a reflection on Mr. Stinson,
7 but I don't believe that Mr. Stinson understands the gravity
8 of what has gone on in this case. I don't think he
9 understands.

10 And so I would want these to be narrowly tailored,
11 but the problem is I need to show a pattern. I need to show a
12 pattern of behavior that these people engaged in, and then I
13 need to show if that pattern changed. And that would be very,
14 very relevant to what I believe is the extraordinary
15 conspiratorial misconduct that went on in this case.

16 And so I'm sure that I wouldn't like somebody going
17 through my dirty laundry and trying to come up with some sort
18 of case against me, but, Your Honor, if it doesn't show
19 anything, then it doesn't show anything, but at this point
20 it's just -- it couldn't be more relevant, it couldn't be more
21 critical. And that two years I think is a very, very narrow
22 kind of focus. Here we sit, it's January 2012. If we ask to
23 go back to January of 2010, we would have 10 months of showing
24 whatever kind of pattern of communication these people had
25 with one another, and then I can almost guarantee you that

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1 it's going to show you that after Dr. Biles made a human
2 mistake that lots and lots of folks make, after that moment in
3 time you're gonna see a very, very different level of
4 communication. And Your Honor is going to see as well, upon
5 reading the deposition, that they did some other interesting
6 things, too. They were using multiple e-mail addresses and
7 using code to tell each other which e-mail address was going
8 back and forth and which one to open, which one not to open.

9 Your Honor, I might as well take just one other
10 second to educate the Court about this because you will have a
11 subpoena coming your way very shortly, and I'm certain that it
12 will be on your desk, but they used -- she was an ICU nurse
13 out in Indiana, and they used the hospital's phone system and
14 the hospital's e-mail system to transmit all of this stuff.
15 And we believe that eventually we're going to find that there
16 was a transmission of the very documents that were found in
17 the hospital OR laundry which attempted to suborn perjury in
18 this case.

19 So, Your Honor, I mean, I think that it's, that it's
20 very, very obvious the gravity of this situation, and we'd ask
21 you to deny the motion to quash and to ask that these
22 documents be produced forthwith.

23 THE COURT: Thank you.

24 Mr. Stinson, anything further you wish to say?

25 MR. STINSON: Your Honor, just briefly, I obviously

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1 don't have the advantage of having seen the deposition
2 transcript, but I, I'm thinking the Court wants to read that,
3 and certainly the Schneiders would feel most comfortable with
4 the Court reading the transcript and reaching its own
5 conclusion as to whether there's been some relevant link
6 established between her testimony and the items sought. You
7 know, I felt like sort of a -- certainly, as Mr. Fleck
8 described it, it seemed incredibly dramatic, and it seemed as
9 if there, there was this conspiracy for that to happen, but
10 obviously that's the plaintiff's job to make those allegations
11 and to paint with a broad brush and to create that drama. And
12 for this moment in time I am asking that the Court be much
13 more interested in what is the actual testimony given by
14 Miss Fallon and what are the factual underpinnings of the
15 claim and do those create that relevant link to obtain this
16 sort of a broad brush of information from the Schneiders.

17 If the Court finds that is so, that there exists
18 grounds for some or all of that to be sought, I would simply
19 ask that the scope be limited so that not all e-mails are
20 disclosed, not all phone calls are disclosed, but rather phone
21 calls and e-mails between the Schneiders and Miss Fallon, that
22 not 15 years of financial history be disclosed. In fact, I'd
23 ask that no financial history be disclosed unless there is a
24 denial on the part of the Schneiders that over the years they
25 have provided money to Miss Fallon. I am told she testified

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1 that they have. So I would ask that the Court, if it finds
2 that link, if it finds there's relevance, to limit the scope
3 to the relevance and not simply to the very broad request.

4 Lastly, I just want to make sure that if there is a
5 cost for production, whatever that cost might be, it be borne
6 by the plaintiff. Plaintiff said it will pay for anything it
7 costs to preserve the evidence, but I want to make sure that
8 statement or the Court's order would include produce the
9 evidence. I would ask that information not be -- phones and
10 computers not be handed over but rather third parties in the
11 form of forensic technologists would obtain that information.

12 So that's my request in toto, Your Honor. I thank
13 you.

14 THE COURT: Thank you.

15 MR. FLECK: Your Honor, this is Dan. We would agree
16 to have third parties and would insist that third parties be
17 the persons to forensically take over that information.

18 As far as the deposition is concerned, Your Honor, it
19 is as has been represented to you, that she is going to admit
20 that she -- she is going to admit that she was the sole author
21 of this document, and I just think that it's incredible to say
22 that, well, you should listen to what the deposition testimony
23 is because the deposition testimony is a very small part of
24 the story. But I think that the Court will be fascinated by
25 the deposition testimony itself.

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1 THE COURT: Well, I'm not sure based upon your
2 representation, and I'm not hearing any objection to that from
3 Mr. Silva at this point that his client --

4 MR. SILVA: Your Honor, you mean in -- this is Craig
5 Silva on behalf of Miss Fallon. You mean in regard to
6 production of that to the Court?

7 THE COURT: No, in regard to the deposition.

8 MR. SILVA: Yeah, I think the deposition speaks for
9 itself, but I don't necessarily disagree with the
10 representations made by Mr. Fleck in regard to what the
11 deposition testimony was.

12 THE COURT: Very well. And as I understand your
13 position, you may oppose the production in this matter;
14 however, you don't consider yourself to have significant
15 standing in the Schneiders' position in it.

16 MR. SILVA: That's correct, Your Honor. Craig Silva
17 on behalf of Miss Fallon. I don't know that we necessarily
18 have a dog particularly in this fight, although I think these
19 same issues may raise themselves at a later date in requests
20 that have been made upon us by Mr. Fleck, although we're
21 trying to work those things out.

22 THE COURT: Very well.

23 Mr. Stinson made reference to statements made by the
24 plaintiff on pages 8 and 9 of their response that they -- that
25 he does not see any support for those, and I assume you

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1 wouldn't -- I wouldn't look for that kind of support in the
2 deposition of Miss Fallon.

3 MR. FLECK: And, Your Honor, this is Dan Fleck. I
4 just -- I'm on page 8 and 9 of the dep -- or of our response,
5 but you cut out on the rest of it. I apologize.

6 THE COURT: What I'm assuming is that your support
7 for each of those allegations and your denials is evidence
8 outside of the deposition that you have accumulated.

9 MR. FLECK: Your Honor, I believe that most of that
10 information is contained within the interrogatory answers that
11 we believe were created by a third party and that were
12 propounded as her own by Miss Fallon. So I don't know whether
13 those things are true or not, but if you go to the last
14 sentence of the first full paragraph on page 9, it says that
15 the interrogatory answers provide the following facts.

16 Now, what Mr. Stinson is claiming -- Miss Fallon
17 claims that basically Jimmy Biles is a vile human being who
18 has committed many, many, many wrongs in his life, and one of
19 the wrongs that she claims he committed was getting into some
20 sort of motor vehicle accident while he was drunk. We are
21 making a statement in the record that she has stated that in
22 her interrogatory answers and it's just simply not true.
23 There's no record of it anywhere. She made it up or, Your
24 Honor, with all due respect to Mr. Stinson, that information
25 was supplied to her by the one and only person who could have

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1 supplied it, which is either John Schneider or Michelle
2 Schneider.

3 Now, there are many examples I believe in the
4 interrogatories of her attempting to use the interrogatories
5 or her author attempting to use the interrogatories to further
6 malign and defame Dr. Biles. And those matters are not true,
7 but for the purposes of our discussion here the fact is that
8 she would have absolutely no way in the entire world to know
9 any of this stuff unless it was told to her by the only person
10 she really knows in Park County, only people she knows in Park
11 County, which is Michelle Schneider or which is John
12 Schneider. She lists a whole, whole lot of other people that
13 could have supplied her that information, but I believe when
14 Your Honor reviews the deposition he is going to understand
15 where that information must have come from.

16 So I -- that's giving you a lot more information than
17 you asked for, Your Honor, but those -- the information that
18 we're supplying on page 8 and 9 we believe is from her
19 deposition -- or, I'm sorry, from her interrogatory answers.
20 And if we say it's not true, well, then maybe that doesn't
21 have a cite to it because she's been the only witness who's
22 been deposed. Maybe that's us telling you that based on our
23 investigation it's not true. It isn't in the defamatory
24 flyer. What it is is an attempt to use this process, the
25 court process, the interrogatory process, to further insult

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1 and defame Dr. Biles.

2 MR. STINSON: Your Honor, this is Laurence Stinson.
3 The point I was making was the one just made by Mr. Fleck,
4 which is whether that information is true or not true, it did
5 not find its way into the defamatory flyer, the alleged
6 defamatory flyer, which is sort of the heart of the action of
7 Biles v Fallon. So my point was the information, whether true
8 or not true, is not relevant to the link between the subpoena
9 and the need for information. That was the point I was trying
10 to make.

11 THE COURT: I understand.

12 MR. FLECK: And, Your Honor, if you -- this is Dan
13 talking. If the Court examines the three documents that were
14 found up there in the laundry in Cody, what the author of
15 those documents says, purportedly to Miss Fallon, is, is that
16 it doesn't matter if any of this stuff is true or false, the
17 only thing we want people to do is we want people to look at
18 his mugshot, we want people to go to the website and look at
19 the mugshot.

20 So the conspiracy here is pretty broad, and it's much
21 bigger than the defamatory flyer, because what's attempting to
22 be done here is they are attempting to use this process itself
23 to actually make things worse for Dr. Biles. And we believe
24 that those documents that were found in the West Park Hospital
25 will ferret that out. And I think really, Your Honor,

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1 that -- well, I don't know. I should ask you. Do you want
2 those documents when the U.S. Attorney and the FBI is looking
3 at them? I can see that you wouldn't, but on the other hand,
4 you know, this happened in your court, and somebody somewhere
5 did something that I've never seen. And I've only been a
6 lawyer for 16 or 17 years, but you can ask Mr. Silva if he's
7 ever seen anything like that. You can ask Bryan Skoric if
8 he's ever seen anything like it. Anybody who's ever looked at
9 that has never seen anything like it. So I don't know what to
10 do about that either. I've been told by a wise old man that I
11 should just put it in your court and let you make that
12 decision about what to do with it because I don't know what to
13 do with it.

14 THE COURT: Well, I assume that there will come a
15 time when we'll have to decide and determine what to do about
16 it.

17 I'm trying to think through the issue at this point
18 as to what benefit delaying ruling while I look at the
19 deposition will accomplish, and, frankly, I can't see any. We
20 know at this point that, as Mr. Stinson has said, Miss Fallon
21 did not seek a preapproval from the Schneiders, that she was
22 the architect, whatever that means, of the document, that is,
23 I am assuming, that she wrote the words, and that she has
24 stated in her deposition, as Mr. Fleck has affirmed, acted
25 alone in this matter. So reading the deposition probably is

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1 not going to be of material assistance in terms of resolving
2 this dispute.

3 Conspiracy is a circumstantial, oftentimes a
4 circumstantial matter in that those who are involved in a
5 conspiracy are usually less than transparent in their conduct,
6 and the parties have to follow the crumbs wherever they may
7 lead. Certainly the -- I'm satisfied at this point that the
8 evidence that is being sought in this matter would be relevant
9 and that should the evidence disclose participation by the
10 Schneiders would be of relevance and significance in this
11 matter since Miss Fallon does not have a close connection with
12 events occurring in Park County, Wyoming, nor with the
13 plaintiff in this matter, Dr. Biles.

14 There appears to be a need to understand the
15 conspiracy in this case for several reasons. First of all, to
16 seek the truth of what is involved in this matter. Secondly,
17 it sounds to me like as if Miss Fallon is a person who the
18 plaintiffs, in their conspiracy theory, believe was used as a
19 conduit for information and is not a source of the defamation
20 which the plaintiffs wish to attack. Third, the time period,
21 I notice that many of the events in this matter occurred
22 during a time of -- within the last two years, and for the
23 most part I don't see the breadth of the time period to be of
24 particular concern. And the list of financial information is,
25 asking for accounts and account numbers since 1996, doesn't

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1 appear to be an undue burden either in terms of the breadth
2 that is being sought.

3 The particularity that has been described in this
4 matter by the plaintiffs seems to be reasonable especially in
5 view of the fact that the plaintiff has agreed to accept the
6 costs of production of these documents and has agreed further
7 that any examination of electronic devices or media will be
8 conducted by independent third party, independent in that it
9 would be a third party expert of some kind probably who would
10 be paid by the plaintiff, which works against independence,
11 but it seems to me the parties could work that out.

12 And so I would, I would order in this matter that the
13 motion to quash should be and the same is to be denied. The
14 third parties are ordered to produce the documents. The
15 plaintiff will pay the costs of production as a condition of
16 the production and will, in terms of any electronic analysis
17 or invasion of computers, will utilize the services of an
18 independent third party.

19 Now, I've also heard in the arguments in this matter
20 that among the computers and telephones and items that have
21 been used in this matter are items that are not in the custody
22 of either Miss Fallon or Miss Schneider and that the plaintiff
23 in their investigation in this matter are concerned about
24 computers and telephones located in hospitals in other
25 locations. What's going to happen there?

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1 MR. FLECK: Your Honor, I don't know. I'm very, very
2 concerned, and I've expressed these concerns to Mr. Silva,
3 that the minute that subpoena goes out that Miss Fallon is
4 going to be fired. I do not want that to happen. I think
5 that she is a pawn in this matter, and I do not want her to
6 suffer some kind of right/wrong detrimental injury because of
7 this matter. But the fact of the matter is she works at a
8 place called Community Hospital out in Indiana. She is an ICU
9 nurse out there. They each have an individual employee
10 e-mail, and that e-mail we believe has been used extensively
11 in communicating with Dr. Schneider. Also, we believe that
12 there is a phone system. Now, what Miss Fallon testified to
13 in her deposition is that she might have used up to 20
14 different computers at Community Hospital to communicate, that
15 she might have used 20 different phone systems. We have
16 subpoenas for West Park Hospital, and those subpoenas, and we
17 haven't been able to trace all those numbers yet, but those
18 subpoenas show many, many, many calls from West Park Hospital
19 to Indiana, but more significantly to this little town that
20 nobody's ever heard of, Fishers, Indiana.

21 So I don't know, and I've asked Mr. Silva, sort of
22 repeatedly expressed this concern I have about what the effect
23 of the subpoena is going to be on Miss Fallon, and we haven't
24 been able to come up with any answers. I think he believes
25 that my concerns are true and sincere and that he holds those

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1 same concerns as well, but, you know, it is what it is. And I
2 think that, I think that we're probably going to need to have
3 a deposition of the CEO out there from this hospital and find
4 out what information there is. I mean, I think that to a
5 degree, Your Honor, going back to the Schneider ruling, I
6 think we're going to need to have some sort of records
7 deposition there, too, to find out what this information is.
8 And I think that the Court and the parties could shortcut
9 matters significantly, particularly as it applies to
10 nonelectronic information, that we be provided -- we provide
11 them with releases just like we would in a medical malpractice
12 case and that we are allowed to procure those records directly
13 from the providers.

14 I would hope, now going back, switching back to the
15 Indiana matter and Indiana hospital, I would hope that, you
16 know, in light of the Court's involvement in this matter and
17 your concern about that issue as well, that Mr. Silva and I
18 could get on the phone and that he could talk to Miss Fallon
19 about some other possible ways of providing us that
20 information. But it's a huge concern of mine, I don't know
21 what to do about it, and so, you know, that's where we are.

22 And Christine put a note in front of me, too, that I
23 need to probably mention that those West Park Hospital
24 computers, we also believe that there are computers at West
25 Park that were used to e-mail things.

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1 THE COURT: Well, you have --

2 MR. SILVA: Your Honor, this is -- I'm sorry, Your
3 Honor.

4 THE COURT: I would be concerned -- you know, these
5 are concerns that are probably premature at this point in
6 terms of patient safety and patient confidentiality,
7 et cetera, but it seems to me there may be some need for
8 filtering.

9 MR. FLECK: 100 percent, Your Honor. This is Dan.
10 We would protect anything of that nature. I have already told
11 Mr. Silva, because we're going to need to get -- one of the
12 requests that I have, and he sort of alluded to it in his
13 argument, we want her computers as well, Lisa Fallon's
14 computer. Now, predictably, and I don't want to come off as
15 too much of a jerk here, but the main computer that was used
16 by Miss Fallon claims to have had orange juice spilled all
17 over it, close quote. If it was any other case, I might just
18 say, oh, well, that's the luck of it, you know, but in this
19 case I've got to raise my eyebrow and say I wonder how that
20 happened.

21 But the deal that I've proposed to Mr. Silva and I
22 believe that he has agreed to is any attorney-client matters
23 that we see in there we would fully 100 percent agree to
24 protect and would not inquire. We would ask our expert to
25 peruse those things or, as you said, Your Honor, filter them

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1 and to come up with something so that we don't see those. And
2 as far as any HIPAA information, as far as any patient
3 information, you know, I have a suspicion that we're going to
4 get a little bit of a dump truck here anyway as far as a load
5 of information, and we don't want any of that stuff, Your
6 Honor. And ordinarily I would just say, as I said earlier,
7 let's have counsel tailor that, but in this case I just
8 don't -- I just don't necessarily trust the product that I'm
9 getting from the person that's the subject of a subpoena, not
10 any reflection on counsel.

11 So it's a roundabout and meandering way of saying,
12 Your Honor, we'll do anything that we need to to protect
13 confidential attorney relations, confidential attorney
14 communications or any sort of HIPAA medical records, private
15 information. We just don't want it, but beyond that we would
16 obviously protect it in any way we had to.

17 THE COURT: Do counsel feel they will be able to work
18 out the mechanics of doing that?

19 MR. SILVA: Your Honor, this is Craig Silva on behalf
20 of Miss Fallon. In regard to her computers and her phone, we
21 are working with Mr. Fleck's office in regard to getting those
22 things taken care of. So I think, yes, counsel can work
23 through that.

24 In regard to the computers and the phone systems at
25 the hospital, I don't have a solution to that issue. I have

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1 the same concerns that Mr. Fleck had that Miss Fallon will
2 probably lose her job. Once that subpoena gets served, I'm
3 sure they'll do some sort of investigation, and I can only
4 imagine that it wouldn't be -- wouldn't bode well for her.
5 But I don't have any good ideas about how to resolve that,
6 that Gordian knot.

7 MR. STINSON: Your Honor, this is Laurence Stinson.
8 As we were talking I realized I hadn't given consideration
9 fully to the idea that the Court would order the computers be
10 physically produced. Now I have some concern. I have never
11 asked Dr. Schneider whether there is patient information or
12 other confidential information on that, on those hard drives
13 or the telephones. Unless the Court has a creative idea, my
14 suggestion would simply be that Mr. Fleck and I instruct the
15 third party to do the filtering, just as he said, and that the
16 attorneys aren't privy to that in some way, but I do have
17 those concerns.

18 THE COURT: That appears to me to be a practical
19 solution -- this is Judge Johnson again -- to a problem that
20 really has not totally developed at this point but counsel are
21 correctly anticipating, that those matters could be filtered,
22 treated almost like a criminal case where there's a wiretap
23 situation and those matters which are not related directly to
24 this matter should be filtered out.

25 MR. FLECK: We agree with Your Honor. This is Dan.

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1 And we'd certainly abide by that ruling.

2 THE COURT: Very well. Any questions?

3 MR. FLECK: Your Honor, my only -- this is Dan again.
4 My only question would be as to the releases. I think that it
5 would be highly appropriate in this case, and maybe it isn't
6 even within the Court's power to command a release, but I
7 believe on the noncomputer information that that would
8 simplify things tremendously.

9 THE COURT: I'm not sure it's within my power to tell
10 people to issue a release in that we are using the power of
11 the Court to compel production at this point but attempting to
12 put into place something that will protect information that is
13 not relevant or helpful to the disposition of this case. And
14 understanding --

15 MR. FLECK: Again, on the issue of cost and the level
16 of burdensomeness that this could create on the parties and
17 the level of future involvement of the Court in the matter of
18 whether we did get everything produced, it would certainly
19 simplify things, but I think I understand the Court's
20 position.

21 THE COURT: All right. Very well. Thank you.

22 MR. FLECK: Thank you, Your Honor.

23 MR. STINSON: Thank you, Judge.

24 MR. SILVA: Thank you, Your Honor.

25 THE COURT: Thank you.

1 (Proceedings concluded 9:31 a.m.,
2 January 4, 2012.)
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6 C E R T I F I C A T E
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8

9 I, JULIE H. THOMAS, Official Court Reporter for the
10 United States District Court for the District of Wyoming, a
11 Registered Merit Reporter and Certified Realtime Reporter, do
12 hereby certify that I reported by machine shorthand the
13 proceedings contained herein on the aforementioned subject on
14 the date herein set forth, and that the foregoing pages
15 constitute a full, true and correct transcript.

16 Dated this 16th day of January, 2012.
17
18
19

20 /s/ Julie H. Thomas

21 JULIE H. THOMAS
22 Official Court Reporter
23 Registered Merit Reporter
24 Certified Realtime Reporter
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